



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 26 1982

Mr. W. Richard West, Jr.
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Suite 1000
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

RECEIVED

MAY 1982

Mordhaug Hallom & Taylor

Confidential Claim Retracted

Authorized by: SC

Date: 6/25/13

Dear Mr. West:

Your letter of March 3, 1982 requested our opinion on issues pertaining to two uranium mining leases executed pursuant to 25 U.S.C. § 396a by the Pueblo of Laguna and the Anaconda Company. Specifically, you seek our views on the duties and responsibilities of the lessee upon termination of operations, and the procedures for cancellation of the leases.

Your concern appears to have arisen because of a recent announcement by Anaconda that as of March 31, 1982 none of the mines covered by the two leases will be producing uranium in paying quantities, and you wish to know whether a lease is automatically terminated by operation of law upon such a declaration by the lessee. We think the obligations of the parties after the cessation of production are spelled out by the terms of the lease and applicable regulations. Our discussion follows.

The two leases were approved by the Secretary on May 7, 1952 and July 30, 1963, respectively, for a term of 10 years and as long thereafter as the minerals specified (uranium and other minerals associated therewith) are produced in paying quantities. The leases grant to the lessee the exclusive right to occupy the land and remove the ore. After the initial 10 year term has expired, the right to occupy the lands for the purpose of removing ore is continued only so long as the lessee is producing minerals in paying quantities. Once production in paying quantities ceases, the lessee's right to engage in activities on the lands related to production of ore is terminated. However, it is my view that inasmuch as the lessee has contractual obligations under the terms of the lease which require continued occupation of the leased lands, principally for the protection and conservation of the property, he is empowered to remain on the land for the purpose of completing these obligations after production in paying quantities ceases. Once the necessary actions have been completed satisfactorily, the lessee's right to occupy the land ceases, the lease is terminated and the performance bond is released.

As compensation for the exclusive right to occupy the lands and remove the ore, the lessee agreed to pay a royalty on all crude ores removed from the land and sold by the lessee, based upon a percentage royalty schedule set forth in the leases. The lessee is obligated to make royalty



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payments on or before the 15th day of the month following removal of the ore from the premises. Thus, the obligation to pay royalty is incurred whenever the mined ore is removed from the premises and sold. It is our view that the obligation to pay royalty on ore which is sold continues until royalties on all ore removed have been paid. Termination of production in paying quantities does not in any way affect this obligation.

The Departmental procedures for surrender of a lease by the lessee are set forth in 25 CFR 171.27(b). These rules require that the lessee: (1) submit an application for cancellation to the appropriate BIA Superintendent; (2) pay a surrender fee of \$1.00; (3) pay all royalties and rentals due, and (4) make a satisfactory showing that full provision has been made for the conservation and protection of the property. The leases also contain provisions governing the surrender and termination of the lease. Of particular importance is the lease requirement that upon termination of operations the lessee must make provision for the conservation of the property and must leave all areas in a condition that will not be hazardous to life or limb.

It is my understanding that upon receipt of an application for surrender the Superintendent refers the matter to the Minerals Management Service (MMS) which reviews the application, inspects the lease site, and determines whether all the requirements of applicable regulations, the lease terms and any operations orders have been met. The MMS may require that appropriate steps be taken to correct any noncompliance. Once it has been determined that all necessary steps have been completed, the application is approved and the lessee is informed by a written notice that the lease has been officially terminated.

The leases also provide for the payment of an annual rental, payable in advance on the anniversary date of the approval of the leases. It is commonly understood by legal authorities that payment of rental is compensation to the lessor for the exclusive right to occupy the lands. Since the lessee is obligated to remain on the leasehold for the purposes of meeting his contractual obligations under the leases after production in paying quantities ceases, I believe there would be an obligation to pay the annual rental if the lessee is occupying the lands on the anniversary dates of the two leases, May 7, 1982, and July 30, 1982.

It is clear from the above recital of the procedures for cancellation that obligations under a lease are not terminated until such time as the lessee has fully complied with all of the lease terms and applicable regulations. Accordingly, it is our view that the declaration by the lessee that production in paying quantities will terminate on March 31, 1982 should be interpreted only as an indication that the lessee intends to request cancellation of the lease in the near future. Such a declaration cannot be regarded as terminating the lease automatically or relieving him of any of his obligations under the lease.

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I hope this expression of our views is helpful. If I can be of any further assistance, let me know.

Sincerely,

Lawrence J. Jensen

Lawrence J. Jensen
Associate Solicitor
Division of Indian Affairs